**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Comprehensive Review of Universal Service Fund Management, Administration, and Oversight | ) | WC Docket No. 05-195 |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| Schools and Libraries Universal Service Support Mechanism | ) | CC Docket No. 02-6 |
| | ) | |
| Rural Health Care Support Mechanism | ) | WC Docket No. 02-60 |
| | ) | |
| Lifeline and Link-Up | ) | WC Docket No. 03-109 |
| | ) | |
| Changes to the Board of Directors for the National Exchange Carrier Association, Inc. | ) | CC Docket No. 97-21 |

## COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] submits its comments pursuant to the Notice of Proposed Rulemaking[2] released by the Federal Communications Commission (FCC or Commission) in the above-referenced dockets, in which the Commission seeks comment on its broad inquiry into the management, administration, and oversight of the Universal Service Fund (USF or Fund).

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[1] USTelecom is the nation's leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom's carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

[2] *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket No. 05-195, CC Docket No. 95-45, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 03-109, CC Docket No. 97-21 (rel. June 14, 2005) (NPRM).

## INTRODUCTION AND SUMMARY

Incumbent local exchange carriers have traditionally been, and for the most part remain as, the provider of the essential networks over which basic and advanced services ride. It is these networks that allow all Americans to communicate with one another, providing universal service to all Americans. Carriers serving high-cost areas rely on universal service support from the high-cost mechanism in order to be able to provide these vitally important networks and services and they must be able to continue to rely on this support. To do so, the Universal Service Fund must be stable and sufficient. In conducting this oversight review of the Fund, the Commission must take action to prevent fraud, waste, and abuse in the Universal Service Fund to ensure that the integrity of the Fund remains intact. Of particular importance in this review is to focus efforts to increase or target oversight of high risk areas of USF support and not to unnecessarily burden other recipients of support.

The Commission should strengthen its oversight of the areas of the Fund where the large majority of the problems have arisen, namely the Schools & Libraries mechanism. In contrast, for the High Cost and Low Income mechanisms the Commission need not adopt broader auditing requirements than those that currently exist. In addition, the Commission need not expand current document retention requirements for recipients of the High Cost and Low Income mechanisms and need not expand the limitation periods for conducting audits beyond necessary document retention timeframes. Any audits conducted should be gauged against Commission rules, not policies and procedures of the Fund administrator that have not been subjected to notice and comment. The Commission should establish a *de minimis* test for determining whether it should proceed with recovery of support that was improperly disbursed due to ministerial or clerical errors. The Commission also should revise its "red light" rules to account for ministerial errors that misleadingly appear to be debt delinquencies.

## I. The Commission's Efforts To Strengthen Its Oversight Of The USF Should Focus On The Areas Of The Fund Where Problems Have Already Been Demonstrated, Specifically Related To Internal Connections For The Schools And Libraries Mechanism.

The allegations of fraud, waste, and abuse in the USF's Schools & Libraries mechanism are noteworthy and troubling. USTelecom encourages the Commission to proceed with vigor in investigating these allegations and ensuring that any fraud, waste, and abuse found is rectified. The problems with the Schools & Libraries mechanism certainly provide sufficient reason for the Commission to strengthen its oversight of that portion of the Fund. As Commissioner Adelstein notes, "This Notice recognizes that there have been fewer problems with priority one services [i.e. telecommunication services and internet access], in our experience."[3] However, the need for broader oversight of the other mechanisms of the Fund, without any evidence of problems similar to those found in the Schools & Libraries mechanism, is not established. There is no need to impose new regulations on the High Cost or the Low Income mechanisms without good reason to justify their need and there is nothing to suggest that there is any need at this time.

## II. The Current Level Of Auditing Of The High Cost And Low Income Mechanisms Is Sufficient; No Additional Targeted Auditing Of These Mechanisms Is Necessary.

Today, the Improper Payments Information Act of 2002 (IPIA)[4] provides for random audits to be conducted so that government agencies can ensure that the funds they administer are not being spent improperly. Through the IPIA the Commission has the authority and the basic auditing tool necessary to prevent or minimize fraud, waste, and abuse. At a minimum, the

[3] Statement of Commissioner Jonathan S. Adelstein, NPRM.

[4] *See* Improper Payments Information Act, Pub. L. No. 107-300.

Commission should review the results of audits conducted under the IPIA before subjecting USF support recipients to any additional general audit requirements.

When the Commission has reason to believe that fraud, waste, and abuse is occurring despite existing auditing safeguards, then the Commission should consider implementing targeted audits. In light of the allegations of fraud, waste, and abuse in the Schools & Libraries mechanism, targeted audits of recipients of that support may be appropriate. However, unlike the current situation with the Schools & Libraries mechanism, there are no serious allegations of fraud, waste, and abuse in the High Cost and Low Income mechanisms and there is no need to implement additional auditing procedures for recipients of high-cost and low-income support.

In situations where the Commission believes targeted auditing is necessary, the Commission should proceed on an individualized basis, not by implementing standardized auditing procedures that would apply generally to all USF support recipients. Targeted audits should take into consideration the many sources of carrier information available through various reports filed with the Commission, other federal agencies, and state agencies. When additional information is needed to verify that a recipient of USF support was properly paid, then the Commission should use a targeted audit to request such information and make appropriate determinations. To broaden the existing audit structure and to expand reporting requirements would be burdensome, duplicative, and unnecessary. The Commission must guard against causing USF support recipients to bear the costs and burdens that would be imposed by establishing additional, regular, non-targeted audits when there is nothing to suggest that the benefits of any such enhanced oversight would outweigh those costs and burdens.

## III. Document Retention Requirements Imposed On Recipients Of Schools And Libraries Support Should Not Be Imposed On Recipients Of Support From Other USF Mechanisms.

The Commission asks whether it should adopt document retention rules for all USF support mechanisms similar to those imposed on the Schools & Libraries mechanism. The Commission should not extend any document retention requirements beyond that to which recipients of the High Cost and Low Income mechanisms may already be subject. There is no evidence to suggest that greater document retention requirements are necessary for recipients of USF support from the High Cost and Low Income mechanisms.

## IV. Any Audits Conducted On Recipients Of High Cost And Low Income Support Should Be Subject To A Limitations Period That Is No Longer Than Three Years At The Outside.

The Commission asks whether a five-year period should be established for initiating and concluding audits and investigations of recipients receiving support from the High Cost, Low Income, and Rural Health Care mechanisms. The Commission should not adopt a five-year period. That is longer than necessary given certain document retention requirements for High Cost and Low Income mechanisms. In light of current document retention requirements for these mechanisms, a three-year limitations period after disbursements have been made from the Fund may be appropriate. Recipients of USF support from the High Cost and Low Income mechanisms should not be subject to an audit for any period beyond the timeframe for which they may be required to keep records. The Commission should not increase regulation of recipients of support from these mechanisms when there is no evidence demonstrating the need for such expansive oversight. Companies should not be burdened with the need to retain documents or with uncertainty in the amount of support that they have already received for an indeterminate period. It makes administrative sense to tie auditing limitation periods to document retention periods. Further, limiting time frames in which companies can be subject to audit should encourage and increase the efficiency of the Fund's administrator.

## V. Any Audits Conducted On Recipients Of High Cost And Low Income Support Should Be Limited To Compliance With FCC Rules Or USAC Policies And Procedures That Have Been Adopted Pursuant To Notice And Comment.

When audited, recipients of USF support should be evaluated on the basis of requirements that are known and binding. Until such time as the Universal Service Administrative Company's (or any other USF administrator's) policies and procedures have been made known and binding under the FCC's notice and comment process, it is unfair to audit USF recipients on the basis of USAC policies and procedures. Not only can these policies and procedures be difficult to locate, suggesting that recipients may not always be aware of them, but they can also be inconsistent with FCC rules because they have not been subjected to the Commission's regulatory processes, potentially leaving recipients with the responsibility of making the choice of whether to follow FCC rules or USAC policies and procedures. There should not be any question of what constitutes compliance, particularly when a USF support recipient is being audited. Because they are known and binding, the Commission's rules should be the basis against which USF support recipients are audited, not USAC policies and procedures that have not been subjected to the Commission's notice and comment process.

## VI. Efforts To Recover USF Support That Has Not Been Improperly Disbursed Should Be Limited To Instances Of Waste, Fraud, And Abuse, Not Ministerial Or Clerical Errors.

USTelecom encourages the Commission to minimize any form of waste, but when waste is not caused by fraud or abuse and errors in payment of USF support are caused by ministerial or clerical errors then the Commission should adopt a *de minimis* test when determining whether to seek recovery of inappropriately paid USF support. The Commission should not require carriers to incur great expense and significant administrative burdens if the amount of recovery is small. Additionally, carriers should not be subject to penalties on any recovery of USF support payments made as a result of ministerial or clerical errors. Nor should any carrier serving a high-cost area be at risk of losing its high-cost support during the recovery process for USF support payments made as a result of ministerial or clerical errors. Without adequate USF support, carriers serving high-cost areas will not be able operate their carrier of last resort networks and provide essential services to customers.

## VII. Ministerial Errors In The USF Support Application Process Should Not Halt Or Delay Support Under Federal Red Light Rules.

Although the Commission has not raised its "red light" rules that were implemented in response to the Debt Collection Improvement Act of 1996 (DCIA)[5] as part of this proceeding, the Commission should re-evaluate and revise its rules so that recipients of USF support are not subjected to critical loss of support for ministerial errors that trigger the rules today. The broad purpose of the red light rules to require recipients of government benefits to remain current on their tax debts is prudent. However, the Commission's efforts to achieve that purpose are fraught with problems. The rules cause companies to be suspended from critical USF support even when delinquencies in debts are not truly delinquencies, but rather what appear to be delinquencies that have been caused by ministerial errors, such as posting errors by the USF administrator's bank, recordkeeping errors by the administrator, and software errors. Companies should not have their support suspended or delayed as a result of ministerial errors, nor should they incur administrative hassles to correct suspensions and delays resulting form ministerial

[5] *See Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, MD Docket No. 02-339, FCC 04-72 (rel. Apr. 13, 2004); *see also* Debt Collection Improvement Act, Pub. L. No. 104-134.

errors, when a few small rule changes would eliminate these problems without any danger of being out of compliance with the DCIA.

The Commission should amend its rules to provide for a 30-day grace period, or a "yellow light" situation, to allow companies time to rectify or clarify any situation that appears to be a delinquency, but in fact is not. Specifically, after a company is notified that it appears to be delinquent, it would be placed in a yellow light status for 30 days, during which time its USF support would not be suspended, providing the company with an opportunity ascertain whether the apparent delinquency was caused by some ministerial error and then to correct or clarify the error. Adopting yellow light rules would increase the predictability of USF support, decrease the hardships caused by an overly strict interpretation of the Debt Collection Improvement Act, and still allow the Commission to ensure that the purpose of the DCIA is implemented.

## VIII. Adjustments To Support Payments Resulting From The True Up Process Should Be Explained By USAC.

When the Fund's administrator makes changes to a recipient's USF support, the administrator should be required to provide supporting detail for the change. Without this detail, recipients of USF support are often unable to determine the basis for the change and to verify the accuracy of the change, all of which is important information to a company's investors and shareholders.

## CONCLUSION

Preventing fraud, waste, and abuse in the Universal Service Fund is an extremely important component in ensuring its stability as well as the ongoing viability of those companies that rely on the Fund for support. The networks across much of America have been built and are maintained by ILECs that rely on USF support to continue serving high-cost areas, providing the basic and advanced services that keep the nation connected and the economy growing. The Commission should adopt oversight regulations that are sufficient to prevent such fraud, waste, and abuse, without expanding regulation to areas of the Fund where there is no need to increase administrative and financial burdens of USF recipients.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on October 18, 2005, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and electronically mailed to the following:


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